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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 745 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

RAMSHAKAL DHANESHWARPRASAD

Versus

ASSISTANT LABOUR COMMISSIONER

Appearance:

MR YATIN SONI for Petitioner
MR V.B.Gerania for Respondent No. 1 & 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 05/08/98

ORAL JUDGEMENT

Rule. Mr. V.B.Gerania waives service of notice of

Rule on behalf of respondent. Ramshakal Dhaneshwarprasad has filed the present petition to challenge the orders passed by the respondent no.1 on 29.3.97 and 29.10.97.

2. The petitioner was working with respondent no.3 since 17.5.79. It is further claimed that he was drawing a pay of Rs.885/- per month and he was a workman. It is further claimed that he was illegally retrenched by an oral order in May 1984. He therefore, made a representation to the respondents nos 1 and 2 regarding his illegal dismissal and to make a reference regarding the same to appropriate forum by giving a complaint through the advocate initially to the Factory Manager on 14.6.86 but no action was taken on the same. He made said demand with the respondent no.2 on 14.9.96. Attempts for conciliation were made but they failed but thereafter the Assistant Commissioner of Labour refused to make a reference by holding that the claim was barred by laches and delay and hence the petitioner has come before this Court.

3. The Assistant Commissioner of Labour on getting a failure report of conciliation between the parties i.e. the workman and the employer will have to make a reference if an industrial dispute is found existing between the parties. It is stated that he cannot go into merits of the industrial dispute. There is no specific provision made in the I.D.Act or any other labour law prescribing limitation for raising an industrial dispute. It is for the Industrial Court/Labour Court to take into consideration the laches and delay if any on the part of the workman or the industry as the case may be and then to pass a final order as per its conclusion. But that is not the jurisdiction of the Assistant Commissioner of Labour or Labour Commissioner. The decision which the Assistant Commissioner of Labour has recorded is a decision of the matter on merits and he has no jurisdiction to do so. Therefore, in the circumstances, present writ petition will have to be allowed. It is obvious that an industrial dispute does exist. Therefore in the circumstances there is no question of again holding further inquiry. The order of the Assistant Labour Commissioner is therefore, quashed and set aside. The workman is already out of employment for the last 14 years. I therefore, direct the respondent no.2 to make a reference of the industrial dispute with a notice to the employer within four weeks from the date of receipt of the writ of this court. The petition is therefore, allowed. Rule is made absolute. No order as to costs.

